

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 13-CV-572
(NAM/CFH)

\$85,221.00 IN U.S. CURRENCY,

Defendant.

APPEARANCES:

Office of the United States Attorney
- Syracuse
Attorney for Plaintiff
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OF COUNSEL:

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Assistant United States Attorney

DONALD T. KINSELLA, ESQ.

JAMES H. GLAVIN, IV, ESQ.

**CHRISTIAN F. HUMMEL
U.S. MAGISTRATE JUDGE**

REPORT-RECOMMENDATION AND ORDER

This matter has been referred to me for Report-Recommendation by the Honorable Norman A. Mordue, Senior United States District Judge. A Verified Complaint for Forfeiture in Rem of \$85,221.00 in United States currency was filed on May 16, 2013. Dkt. No. 1.

Together with the Verified Complaint, a Warrant of Arrest in Rem was issued. Dkt. No. 2. The Warrant of Arrest in Rem required the Marshall to seize the property and to serve notice upon all potential claimants for the property.

The Warrant of Arrest in Rem also requires that all persons asserting an interest in the defendant property must file a verified claim with the Clerk of the Court pursuant to the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims. Dkt. No. 2. The Warrant of Arrest in Rem further provides that all persons asserting an interest in the property appear before the Honorable Norman A. Mordue on August 14, 2013 in Syracuse, New York. Dkt. No. 2. The Warrant of Arrest in Rem also provides specific notice that the failure to file a claim and appear at the appropriate time will result in “judgment by default . . . for the relief demanded in the complaint.” Id. at 2.

The docket sheet in this case shows that the Verified Complaint for Forfeiture, together with the Warrant of Arrest in Rem, was served on all potential claimants listed on the complaint. Dkt. Nos. 3–4. The docket sheet further indicates that notice was published on an official government website, www.forfeiture.gov. Dkt. No. 13.

On June 28, 2013, Robert M. Romaine and Emilia Romaine filed verified claims. Dkt. Nos. 5–6. On August 7, 2013, the government filed an amended complaint. Dkt. No. 9. On August 14, 2013, the Honorable Norman A. Mordue presided over the court appearances specified in the Warrant in Rem. At that hearing, the government requested that an additional in rem hearing be scheduled to permit potential claimants to the amended complaint to appear. Judge Mordue scheduled an additional in rem hearing for November 4, 2013.

The docket sheet in this action shows that the Amended Verified Complaint of

Forfeiture in Rem was served on all potential claimants listed in the amended complaint. Dkt. Nos. 11–12. The docket sheet further indicates that notice was published on an official government website, www.forfeiture.gov. Dkt. No. 22.

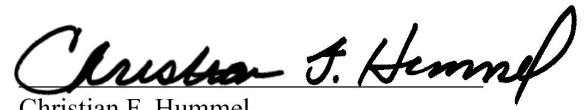
Judge Norman Mordue referred this case to me to preside over the return date for the in rem hearing. On November 4, 2013, this Court presided over the Court appearance for the in rem hearing regarding the amended complaint. The government has acknowledged the filing of verified claims of ownership by Robert M. Romaine (Dkt. No. 5) and Emilia Romaine (Dkt. No. 6). At the hearing there was no appearance by or on behalf of anyone else who claims an interest in this property.

WHEREFORE, based upon the findings above, it is **RECOMMENDED**, that Senior United States District Judge Norman A. Mordue sign the attached proposed order submitted by the Assistant United States Attorney which provides for this action to proceed into the discovery phase with respect to the claims of Robert M. Romaine and Emilia Romaine, and which bars and forecloses all other claims,¹ and it is **ORDERED**, that based on the nature of this proceeding, the Clerk immediately deliver this Report and Recommendation to the Honorable Norman A. Mordue for his consideration without the normal fourteen day waiting period.

¹ There is presently pending before Senior Judge Norman A. Mordue a motion by claimants pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the amended complaint of forfeiture in rem in its entirety. The conducting of discovery in this matter should be stayed pending a decision on that motion.

IT IS SO ORDERED.

Dated: November 5, 2013
Albany, New York

A handwritten signature in black ink, reading "Christian F. Hummel". The signature is written in a cursive style with a large, stylized "C" and "H".

Christian F. Hummel
U.S. Magistrate Judge